

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA, and)	
THE COMMONWEALTH OF)	
KENTUCKY)	
)	
Plaintiffs,)	
)	Civil Action No.
v.)	
)	
THE LOUISVILLE AND JEFFERSON)	
COUNTY METROPOLITAN SEWER)	
DISTRICT, a municipal corporation.)	
)	
)	
Defendants.)	
)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action for penalties and injunctive relief brought under Sections 308 and 309 of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1318 and 1319, against Defendant Louisville and Jefferson County Metropolitan Sewer District ("MSD") for failing to provide information and conduct sampling as required by Section 308 of the Act, and discharges of pollutants in violation of Section 301 of the Act, 33 U.S.C. § 1311, which prohibits the discharge of any pollutant into waters of the United States unless such discharges are in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit. Specifically, MSD has:

(1) discharged pollutants without providing the requisite primary and/or secondary treatment at its wastewater treatment plants, i.e., bypasses; (2) failed to report bypasses as required by its NPDES permits; (3) exceeded the effluent limits of its NPDES permits; (4) failed to properly operate and maintain its wastewater treatment facilities; (5) failed to monitor and/or maintain records of wastewater treatment plant flow and/or failed to provide such records pursuant to Section 308 of the Act; and (6) failed to provide other information and conduct sampling as required by Section 308 of the Act.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this action pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. The United States has authority to bring this action on behalf of the Administrator of EPA ("Administrator") under Section 506 of the Act, 33 U.S.C. § 1366 and 28 U.S.C. §§ 516 and 519.

4. Venue is proper in the Western District of Kentucky pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b).

THE PARTIES

5. Plaintiffs are the United States of America, acting at the request and on behalf of the Administrator of the United States Protection Agency, and the Commonwealth of Kentucky.

6. Defendant MSD is a municipal corporation and political subdivision of the Commonwealth established under the laws of the Commonwealth, KRS Chapter 76, and is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

7. Defendant MSD is responsible for the operation and maintenance of wastewater treatment facilities and the sanitary sewer and stormwater drainage system serving residential, commercial and industrial entities throughout the City of Louisville and Jefferson County, Kentucky.

CLEAN WATER ACT STATUTORY REQUIREMENTS

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the “discharge of pollutants” by any person into navigable waters of the United States except in compliance with that Section, and, where applicable, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

9. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that EPA may authorize a state to administer the NPDES program within its jurisdiction. The Commonwealth of Kentucky has been authorized to administer the NPDES program within its jurisdiction pursuant to Section 402(b) of the Act, 33 U.S.C. § 1362(7).

10. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the permit-issuing authority may issue an NPDES permit which authorizes the discharge of any pollutant directly into navigable waters of the United States, but only in compliance with the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the Act.

11. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, *inter alia*, Sections 301 or 308 of the Act, 33 U.S.C. §§ 1311 or 1318, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

12. Section 308 of the Act, 33 U.S.C. § 1318, states:

Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard of performance; . . .

(A) the Administrator shall require the owner or operator of any point source to: (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods . . . (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such a manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require.

33 U.S.C. § 1318(a)(2)(A).

13. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides that any person who violates Sections 301 or 308 of the Act, 33 U.S.C. §§ 1311, 1318, or violates any permit condition or limitation in an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each violation which takes place prior to January 31, 1997. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101- 410, enacted October 5, 1990; 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note; Public Law 104-134, enacted April 26, 1996; 110 Stat. 1321), the penalty is presently \$32,500 per day for each violation which takes place on or after March 15, 2004.

GENERAL ALLEGATIONS

14. At all times relevant herein, MSD has owned or operated wastewater treatment facilities ("WWTFs") and their associated sanitary sewer and combined sanitary sewer - storm sewer collection systems, which receive and treat wastewater and storm water runoff from residential, commercial and industrial sources located within the City of Louisville and Jefferson

County, Kentucky, and discharge treated, partially treated, and untreated wastewater into the Ohio River and its tributaries.

15. The Ohio River and its tributaries are “navigable waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

16. The Commonwealth has been authorized by EPA to administer the NPDES program within its jurisdiction pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), and to issue NPDES permits authorizing the discharge of pollutants directly into navigable waters of the United States in compliance with the applicable requirements of Section 301 of the Act, 33 U.S.C. § 1311, and such other conditions as the Administrator determines are necessary to carry out the provisions of the Act.

17. Under its authority to issue NPDES permits, the Commonwealth, through the Kentucky Department of Environmental Protection (“KDEP”), has issued permits to MSD under the Kentucky Pollutant Discharge Elimination System for each of the 23 WWTFs operated and maintained by MSD, authorizing the discharge of pollutants, within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12), in accordance with effluent limitations, monitoring requirements, and other conditions set forth in each NPDES permit. Each NPDES permit has been in effect at all times relevant to this Complaint.

18. Only one of the NPDES permits issued to MSD, permit no. KY0022411 issued for the Morris Forman WWTF, authorizes the discharge of pollutants from point sources other than a WWTF post-treatment outfall, those point sources being the approximately one hundred fourteen (114) combined sewer overflow (“CSO”) points specified in that permit.

19. On February 25, 2004, the Environmental and Public Protection Cabinet of the Commonwealth of Kentucky entered into an Agreed Order with MSD resolving multiple

previous instances of non-compliance with effluent discharge limits specified in permit no. KY0022411 issued for the Morris Forman WWTF. The previous effluent discharge violations resolved under the Agreed Order are outside the scope of this Complaint.

20. On August 12, 2005, the Court entered a Consent Decree which was designed to resolve civil claims for penalties for certain violations alleged in a previously filed complaint against MSD through the date of entry of the Consent Decree. The 2005 Consent Decree further provided for injunctive relief with respect to certain components of MSD's collection system, and MSD's Jeffersontown WWTF. The 2005 Consent Decree did not provide for injunctive relief for all of MSD's WWTFs, and expressly stated that the Parties anticipated that the Consent Decree would be amended as MSD develops, designs, submits for review and approval and implements additional compliance measures and projects, including those specified therein. (See Paragraph 7 of the 2005 Consent Decree.)

21. As set forth in paragraph 43 of the 2005 Consent Decree, nothing in the 2005 Consent Decree shall be construed to waive or limit any remedy or cause of action by EPA based on statutes or regulations under applicable jurisdiction, and EPA expressly reserved its rights at any time to issue administrative orders and to take any other action deemed necessary, including the right to order all necessary remedial measures and assess penalties for violations.

22. At all times relevant to this Complaint, MSD has violated, and continues to violate, Section 301 of the Act, 33 U.S.C. § 1311, by failing to meet the limitations and conditions contained in the NPDES permits issued by KDEP, and by discharging pollutants without an NPDES permit, and by failing to properly operate and maintain its wastewater treatment, collection and transmission facilities, and by failing to comply with the requirements of Section 308 of the Act.

FIRST CLAIM FOR RELIEF:
FAILURE TO COMPLY WITH BYPASS PROHIBITION

23. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. MSD operates its Jeffersontown WWTF such that a significant portion of the flow bypasses required secondary biological treatment units. In these instances, the bypass flow receives primary treatment and is recombined (blended) with the secondary discharge prior to ultraviolet treatment and then discharged. Such bypasses result in the discharge of untreated or partially treated sewage and are prohibited by 401 Ky. Admin. Regs. ("KAR") 5:065 Subsection (13)(c), which is incorporated by reference as a standard permit condition in Part II of each NPDES permit issued by KDEP to MSD.

25. Since the date of entry of the 2005 Consent Decree (August 12, 2005), MSD has violated the bypass prohibition in its NPDES permit for the Jeffersontown WWTF on at least 71 occasions.

26. Since the date of entry of the 2005 Consent Decree (August 12, 2005), MSD has bypassed primary and/or secondary treatment at other WWTF's on at least four occasions, including at Starview (2 occasions), Polo Fields, and Hite Creek.

27. Each of the discharges referred to in Paragraphs 25 and 26 involved a discharge of pollutants from a point source into navigable waters of the United States, within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, in violation of MSD's NPDES permits.

28. Each day MSD failed to comply with the bypass prohibitions of the NPDES permits constitutes a separate violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

29. Under Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19, MSD is liable for a civil penalty of up to \$32,500 per day for each violation of Section 301 of the Act, 33 U.S.C. § 1311, occurring on or after March 15, 2004.

30. Unless restrained by an order of the Court, MSD will continue to violate Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by discharging untreated and/or partially treated sewage from its WWTF's into waters of the United States, in violation of the bypass prohibitions in its NPDES permits.

SECOND CLAIM FOR RELIEF:
FAILURE TO REPORT BYPASSES

31. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

32. On at least 71 separate occasions since entry of the 2005 Consent Decree, MSD failed to report to the Commonwealth bypasses at the Jeffersontown WWTF in accordance with its NPDES permits and the Kentucky regulations.

33. Bypasses are prohibited except under specific circumstances, pursuant to 401 KAR 5:015 and 401 KAR 5:065 (13). The reporting requirements with respect to bypasses are set forth in 401 KAR 5:065 Subsection (12)(f).

34. Each day MSD failed to comply with the reporting requirements of 401 KAR 5:015 and 401 KAR 5:065 Subsection 12(f) constitutes a separate violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

35. Under Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19, MSD is liable for a civil penalty of up to \$32,500 per day for each violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, occurring on or after March 15, 2004.

36. Unless restrained by an order of the Court, MSD will continue to violate 401 KAR 5:015 and 401 KAR 5:065 Subsection 12(f) by failing to properly report bypasses from its WWTF's.

THIRD CLAIM FOR RELIEF:
FAILURE TO COMPLY WITH EFFLUENT PARAMETERS

37. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

38. Each of the NPDES permits issued to MSD by KDEP set forth applicable effluent limitations pursuant to which MSD is authorized to discharge pollutants, including effluent limitations for fecal coliform, total suspended solids (TSS) and carbonaceous biochemical oxygen demand (CBOD).

39. Since entry of the 2005 Consent Decree (August 12, 2005), MSD has experienced 1,360 days of violation of the effluent limitations in its NPDES permits including for fecal coliform, TSS and CBOD limitations, which constitute separate violations of Section 301 of the Act, 33 U.S.C. § 1311.

40. Under Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890

(1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19, MSD is liable for a civil penalty of up to \$32,500 per day for each violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, occurring on or after March 15, 2004.

41. Unless restrained by an order of the Court, MSD will continue to violate the effluent parameters set forth in its NPDES permits.

FOURTH CLAIM FOR RELIEF:
FAILURE TO PROPERLY OPERATE WASTEWATER TREATMENT SYSTEMS

42. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

43. As set forth in 401 KAR 5:065 Subsection (1)(b)(5), MSD is required at all times to properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the permittee to achieve compliance with the conditions of its permit.

44. Based upon the limited flow data provided to EPA by MSD, the data shows that MSD did not utilize the full secondary treatment capacity at the Jeffersontown WWTF before initiating a bypass on numerous occasions since entry of the Consent Decree on August 12, 2005. As a result, MSD is not properly operating its Jeffersontown WWTF in accordance with the requirements of 401 KAR 5:065 Subsection (1)(b)(5).

45. Such bypasses constitute violations of the operating conditions set forth in 401 KAR 5:065, Subsection (1)(b)(5), and each day on which such a bypass occurred constitutes a separate violation for failing to properly operate the Jeffersontown WWTF under Section 301 of the Act, 33 U.S.C. § 1311.

46. Under Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19, MSD is liable for a civil penalty of up to \$32,500 per day for each violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, occurring on or after March 15, 2004.

47. Unless restrained by an order of the Court, MSD will continue to violate 401 KAR 5:065 Subsection (1)(b)(5) by failing to properly operate its Jeffersontown WWTF.

FIFTH CLAIM FOR RELIEF:
FAILURE TO MONITOR WWTF FLOW
AND/OR MAINTAIN RECORDS AND/OR COMPLY WITH
INFORMATION REQUESTS SUBMITTED PURSUANT
TO SECTION 308 OF THE CLEAN WATER ACT

48. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

49. Pursuant to Part I.A of MSD'S NPDES permits for Cedar Creek, Floyds Fork, Hite Creek, Jeffersontown, West County, Bancroft, Lake Forest, Chenowith Hills, KJC Institute for Women, Lake of the Woods, McNeely Lake, Hunting Creek North, Silver Heights, Timberlake, Watterson Woods and Yorktown, MSD is required to measure the wastewater flow in its WWTFs on a continuous basis. In addition to 401 KAR 5:065 Subsection 1(10)(b), MSD is required to maintain such flow measurement records for a period of three years from the date of measurement.

50. EPA asked MSD informally on October 12, 2006 and, pursuant to requests dated December 20, 2006 and March 14, 2007 under Section 308 of the Clean Water Act, 33 U.S.C. §

1318, to produce certain information that would be contained in flow measurements which MSD is required to take on a continuous basis and for which MSD is required to keep records for three years from the date of measurement. The information sought by EPA was the records evidencing the measurement for the highest flow rate for each day (known as the “daily peak flow”) over the last five years. MSD represented that it has provided EPA with all the flow information it has.

51. MSD failed to provide peak flow data as requested by EPA pursuant to Section 308 of the Clean Water Act for approximately 63.5% of the three year time period ending December 20, 2006 for which such data should have been maintained by MSD if MSD had complied with the continuous flow measurement and record keeping requirements. Therefore, MSD has failed to conduct such continuous flow measurement, and/or failed to keep the required records of such flow measurement, and/or failed to provide the information to EPA as required by Section 308 of the Clean Water Act.

52. Failure to conduct flow measurement and maintain records in accordance with MSD’s NPDES permits and 401 KAR 5:065 Subsection 1(10)(b) constitutes separate violations of Section 301 of the Act, 33 U.S.C. § 1311. Failure to respond to an information request issued by EPA pursuant to Section 308 of the Clean Water Act constitutes separate violations of Section 308 of the Clean Water Act.

53. Under Sections 309(b) and (d) of the Act, 33 U.S.C. §§ 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR) Part 19, MSD is liable for a civil penalty of

up to \$32,500 per day for each violation of Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, occurring on or after March 15, 2004.

54. Unless restrained by an order of the Court, MSD will continue to violate the monitoring and record keeping requirements set forth in its NPDES permits with respect to each of its WWTFs and to comply with Section 308 of the Clean Water Act.

SIXTH CLAIM FOR RELIEF:
FAILURE TO COMPLY WITH INFORMATION REQUESTS
SUBMITTED PURSUANT TO SECTION 308 OF THE ACT

55. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

56. On October 12, 2006, EPA outlined information that it would be seeking from MSD pursuant to Section 308 of the Act in order to carry out the objectives of the Clean Water Act. Specifically, EPA sought, through the Section 308 requests, to determine, inter alia, the extent and nature of MSD's bypassing practices at its WWTF's and to determine if capacity problems existed at the WWTF's. MSD requested that EPA not submit a formal inquiry pursuant to Section 308 of the Clean Water Act. EPA agreed to MSD's request not to submit a formal information request, provided MSD's answers were certified and complete.

57. On November 10, 2006, MSD submitted a certified response to EPA regarding the extent and nature of MSD's bypassing procedures at its WWTFs and to determine if capacity problems existed at the WWTFs. MSD's response provided evidence of: (a) frequent bypassing of secondary treatment at its Jeffersontown WWTF, (b) bypasses of primary and/or secondary treatment at other WWTF's due to insufficient capacity, and (c) sanitary sewer overflows ("SSO's") that were occurring from upstream structures near the WWTFs due to insufficient capacity at the WWTF. However, MSD's November 10, 2006 response was not complete, and in some cases contradictory. As an example, MSD's answer to question number 2 indicated that

peak flow data was not available for the WWTF's prior to October 17, 2006, but in MSD's exhibit No. 4 to its response, MSD stated that it in fact collected and maintained such data on the Plant Information Software Server or on chart recorders.

58. Because of MSD's incomplete November 10, 2006 response, EPA sent a formal Section 308 Information Request letter to MSD on December 20, 2006. MSD was required to respond to the request within twenty-one (21) days, and was advised that failure to comply with the request may result in enforcement proceedings. The response deadline was later extended thirty (30) days.

59. In its November 10, 2006 response, MSD said that it stored peak flow data on its Plant Information Software Server. The December 20, 2006 Information Request sought, *inter alia*, peak flow and daily peak flow data from the data stored on the Plant Information Software Server, chart recorders or other documents maintained by MSD for the following WWTP's owned and operated by MSD: Cedar Creek, Floyds Fork; Hite Creek; Jeffersontown; West County, Bancroft, Lake Forest; Chenoweth Hills; KJD Institute for Women; Lake of Woods; McNeely Lake; Hunting Creek North; Silver Heights; Timberlake; Watterson Woods; Yorktown.

60. The December 20, 2006 Information Request sought, *inter alia*, information pertaining to discharges to waters of the United States, including the structure from which the discharge occurred, (located on a diagram), and the level of treatment the discharge received prior to discharge.

61. The December 20, 2006 Information Request sought, *inter alia*, information as to how the blending volumes shown in MSD's Monthly Operating Reports for June, July and August 2006 for the Jeffersontown WWTF were determined and required that MSD provide all documentation related to the volume measurement. In its November 10, 2006 response, MSD

stated that the bypass flow volume data had not been collected prior to October 17, 2006, although the Monthly Operating Reports for June, July and August 2006, for the Jeffersontown WWTF included such data. MSD's November 10, 2006 response also indicated that MSD was conducting bypass flow measurements on March 19, 2001. The December 20, 2006 Information Request also sought information as to when the flow or volume monitoring device was installed, a description of the flow or volume monitoring device; what events were measured and why and to explain how and why MSD was measuring bypass flow on March 19, 2001, and the results of those measurements.

62. The December 20, 2006 Information request also asked MSD to explain the basis for its claim in the November 10, 2006 response that the 20 mgd peak design flow for the Jeffersontown WWTF included "permitted" high flow diversion of 10.5 mgd.

63. The December 20, 2006 Information request also asked MSD, with respect to the constructed overflow upstream of the siphon just upstream from the Jeffersontown WWTP, to provide a list of all inspections conducted from 1/1/2001 to the present, including date, time, conditions observed and whether the inspection was conducted during wet weather, and to include a copy of the inspection reports and log books.

64. MSD submitted its response to the December 20, 2006 Information Request on January 20, 2007. Although EPA was able to confirm again from MSD's response that MSD was illegally bypassing treatment at its WWTF's, MSD's response was once again incomplete. As an example, MSD provided comprehensive peak flow data for only three (3) of the sixteen (16) WWTF's for which such information was requested, without an explanation as to why the remaining data was not provided.

65. Due to incomplete and contradictory responses EPA once again received from MSD to the December 20, 2006 Information Requests, EPA, on March 14, 2007, issued a second follow-up Information Request pursuant to Section 308 of the Act. MSD was required to comply with the March 14, 2007 Information Request within twenty-one (21) days and was advised that failure to comply may result in enforcement proceedings. Copies of the December 20, 2006 and March 14, 2007 Information Requests are attached hereto collectively as **Exhibit ____**).

66. The time for MSD to commence sampling and to respond to the March 14, 2007 Information Request has passed. MSD has not responded to the Information Request. Therefore, MSD has failed and continues to fail to perform in accordance with the Request in violation of Section 308 of the Act, 33 U.S.C. § 1318(a).

67. Under Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), amended by Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); 61 Fed. Reg. 69,360 (Dec. 31, 1996); and 69 Fed. Reg. 7121 (Feb. 13, 2004), codified at Title 40 of the Code of Federal Regulations (CFR), MSD is liable for injunctive relief and civil penalties of up to \$32,500 per day for each violation of Section 308 of the Clean Water Act occurring on or after March 15, 2004.

68. Unless enjoined by this Court, MSD's failure to comply with the Information Requests will continue in violation of Section 308 of the Act, 33 U.S.C. § 1318(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America requests that the Court enter judgment on behalf of the United States against the Defendants as follows:

a. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), order MSD to undertake a program to achieve permanent and consistent compliance with all terms and conditions of its NPDES permits for all of its WWTFs and with the requirements of the Clean Water Act and the regulations promulgated thereunder, as they pertain to the violations alleged herein, including full compliance with Section 308 Information Requests issued by EPA;

b. Pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), assess civil penalties against MSD of up to \$32,500 per day for each violation of Sections 301, 308 and/or 402 of the Act, 33 U.S.C. §§ 1308, 1311, 1342, as alleged in this Complaint, occurring after entry of the 2005 Consent Decree;

c. Award the United States and the Commonwealth their costs in the action; and

d. Grant the United States and the Commonwealth such other relief as the Court deems appropriate.

Respectfully submitted,

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